

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

|  |   |                  |
|--|---|------------------|
| CASAS, BENJAMIN & WHITE, LLC,              | ) |                  |
|  | ) |                  |
| Plaintiff,                                 | ) |                  |
|  | ) |                  |
| vs.  | ) | No. 04-12333-MEL |
|  | ) |                  |
| THE POINTE GROUP, INC., a                  | ) |                  |
| Massachusetts corporation d/b/a The Pointe | ) |                  |
| Group Healthcare and Senior Living;        | ) |                  |
| GERALD S. FREID; BARRY FREID; and          | ) |                  |
| KEY CORPORATE CAPITAL, INC.,               | ) |                  |
|  | ) |                  |
| Defendants.                                | ) |                  |

**MOTION TO WAIVE REQUIREMENT OF SECURITY**

Pursuant to Mass. R. Civ. P. 65(c), Plaintiff Casas, Benjamin & White, LLC (hereinafter, “plaintiff” or “CBW”), hereby moves the Court to waive the requirement that plaintiff provide security in connection with its request for entry of injunctive relief. In support of this motion, plaintiff states as follows.

1. This is an action in which plaintiff seeks to recover a fee in excess of \$1,000,000 for investment banking services provided by CBW for the benefit of defendants, The Pointe Group, Inc., d/b/a The Pointe Group Healthcare and Senior Living (“TPG”), Gerald S. Freid and Barry Freid (hereinafter “Defendants”), in connection with the sale or refinance of Defendants’ nursing home and assisted living facilities.

2. CBW has moved for entry of a preliminary injunction restraining Defendants, their officers, directors, agents, servants, and employees, from disbursing or transferring any part of the monies received from the sale of the facilities until further Order of the Court.

3. Courts have interpreted Fed.R.Civ.P. 65(c) as providing for judicial discretion as to whether security is posted by an applicant for injunctive relief. As the First Circuit Court of Appeals stated in Aoude v. Mobil Oil Corp., 862 F.2d 890, 896 (1<sup>st</sup> Cir. 1988), “[t]he posting of a bond is not a jurisdictional prerequisite to the validity of a preliminary injunction...”. Courts have waived the security bond requirement in cases where there has been no proof of likelihood of harm to the enjoined party. See International Controls Corp. v. Vesco, 490 F.2d 1334, 1356 (2<sup>nd</sup> Cir. 1974), cert. denied, 94 S. Ct. 2644.

4. In this case, Defendants cannot claim that they will suffer any substantial harm if the injunction is entered, as the requested injunction would not prohibit Defendants or their agents from doing business in the normal course, but merely from dissipating monies that Defendants wrongfully failed to pay over to CBW.

WHEREFORE, Plaintiff Casas, Benjamin & White, LLC respectfully requests that this Court waive the requirement that plaintiff post security in connection with its request for injunctive relief in this matter.

CASAS, BENJAMIN & WHITE, LLC

By its attorneys,

/s/ Erin K. Higgins

Thomas E. Peisch / BBO #393260

Erin K. Higgins / BBO #559510

Michael R. Bernardo / BBO #648310

CONN KAVANAUGH ROSENTHAL PEISCH  
& FORD, LLP

Ten Post Office Square

Boston, MA 02109

(617) 482-8200

/s/ Richard P. Steinken (ekh)

Richard P. Steinken, admitted *pro hac vice*

Jeff J. Marwil, admitted *pro hac vice*

David W. Austin, admitted *pro hac vice*

JENNER & BLOCK, LLP

One IBM Plaza

Chicago, IL 60611-7603

Dated: December 21, 2004  
Boston, Massachusetts

**LOCAL RULE 7.1 CERTIFICATION**

The undersigned counsel hereby certifies that on December 21, 2004, plaintiff's counsel conferred by telephone with defendants' counsel, Todd B. Gordon, and attempted in good faith to resolve or narrow the issues raised in this motion.

/s/ Erin K. Higgins

Erin K. Higgins

Dated: December 21, 2004  
Boston, Massachusetts